

§ 48.4042-3 Certain types of commercial waterway transportation excluded.

(a) *Deep draft ocean-going vessels*—(1) *In general.* Under section 4042(c)(1), there is no tax imposed by section 4042(a) if:

- (i) The vessel was designed primarily for use on the high seas; and
- (ii) The vessel has a draft of more than 12 feet on the voyage for which the fuel tax exclusion is sought (*e.g.* 12 feet 1 inch).

(2) *Meaning of “designed primarily for use on the high seas.”* Section 4042(c)(1) requires a determination of the primacy of the design features rendering the vessel useful for service on the high seas, as opposed to the features which render the vessel useful for service on all less turbulent waters. Thus, whether a ship is “designed primarily for use on the high seas” must be determined from all the facts, including structural features and equipment. If the predominant use of a vessel is on the high seas, it shall be presumed to be “designed primarily for use on the high seas.” If the predominant use of a vessel is on waters other than the high seas, it shall be presumed not to be “designed primarily for use on the high seas.”

(3) *Meaning of “high seas.”* For purposes of this section, “high seas” shall mean waters other than the territorial waters of the United States or any other country. Thus, the high seas shall not include the internal waters of any country, the Great Lakes, harbors, or narrow coastal indentations.

(4) *Twelve foot draft*—(i) *Definition.* For purposes of section 4042(c)(1), “draft” shall mean the maximum vertical distance between the mean water line and the bottom of the keel. In cases where a vessel has a skeg or other appendage extending locally below the line of the keel, the draft shall be measured from the deepest appendage. A separate determination of draft must be made for each voyage when the vessel has its greatest load of cargo and fuel. For purposes of this determination, the term “voyage” means a round trip voyage. Therefore, if a vessel travels into the specified waterway system to pick up cargo and has a draft

sufficient to qualify for the exclusion when loaded, then for purposes of section 4042(c)(1) the vessel satisfies the 12 foot draft requirement for the entire voyage. Similarly, if a vessel loaded with cargo travels into the specified waterway system with a draft sufficient to qualify for the exclusion provided by section 4042(c)(1), then the fuel consumed on the entire voyage may be excluded, regardless of the vessel’s draft after the cargo is unloaded.

(ii) *Example.* The following example illustrates the application of paragraph (a)(4)(i) of this section:

Example. A ship with a design draft of 20 feet (maximum certified draft when fully loaded) travels into a taxable waterway with only a partial load, such that the draft is 12 feet. The ship unloads and departs the waterway empty. The portion of the fuel consumed for propulsion of the vessel on the specified waterway is taxable because only vessels with a draft greater than 12 feet are eligible for the section 4042(c)(1) exemption from tax.

(b) *Commercial passenger vessels.* Under section 4042(c)(2), the tax imposed by section 4042(a) does not apply to fuel consumed by vessels used primarily for the transportation of persons. Thus, commercial passenger vessels while being operated as passenger vessels are not subject to tax, even if such vessels in fact transport property in addition to transporting passengers. Similarly, ferry boats carrying passengers are not subject to tax, even if such vessels carry the passengers’ automobiles.

(c) *Exemption for State or local governments*—(1) *In general.* Under section 4042(c)(3), there is no tax imposed by section 4042(a) if:

- (i) The vessel is being used by a State or local government; and
- (ii) The vessel is being used in transporting property in the State or local government’s business.

(2) *State or local government.* For purposes of paragraph (c)(1)(i) of this section a “vessel is being used by a State or local government” if it is operated by any State, the District of Columbia, or any political subdivision of a State. If a private party is contracted to haul for a State or local government, the vessel is not “being used by a State or

Internal Revenue Service, Treasury

§ 48.4061(a)-1

local government.” Similarly, if a person other than a State or local government is contracted to supply vessel operators, the fuel consumed by the vessel is not used “by a State or local government,” regardless of ownership of the vessel. However, when a local government leases barges and employees of the local government operate the barges, the vessel is being used by the local government.

(3) *Government business.* The test for whether a vessel is being used “in transporting in a State or local government’s business,” within the meaning of paragraph (c)(1)(ii) of this section, is whether the ultimate use of the cargo is for a function which is ordinarily carried out by governmental units. For example, when the cargo transported is salt to be spread on icy roads, the vessel is being used “in transporting in a State or local business” because the use to which the cargo will be put (road maintenance) is a function ordinarily performed by governmental units. Fuel consumed in a vessel transporting property for compensation or in furtherance of a business not ordinarily carried out by a governmental unit is not exempt from taxation by section 4042(c)(3).

(d) *Ocean-going barges.* Under section 4042(c)(4), the tax imposed by section 4042(a) does not apply to fuel consumed by tugs moving exclusively barges released by ocean-going carriers solely to pick up or deliver international cargos. The tax exemption provided by section 4042(c)(4) applies to LASH barges, SEABEE barges, and all other ocean-going barges carried aboard ocean-going vessels. There is no exemption under section 4042(c)(4) while:

(1) One or more of the barges in the tow is not a LASH barge, SEABEE barge, or other ocean-going barge carried aboard on ocean-going vessel; or

(2) One or more of the barges in the tow is not on an international voyage; or

(3) Part of the cargo in the tow is not being transported internationally.

[T.D. 7727, 45 FR 70862, Oct. 27, 1980]

Subpart H—Motor Vehicles, Tires, Tubes, Tread Rubber, and Taxable Fuel

SOURCE: T.D. 6648, 28 FR 3633, Apr. 13, 1963, unless otherwise noted.

AUTOMOTIVE AND RELATED ITEMS

MOTOR VEHICLES

§ 48.4052-1 Heavy trucks and trailers; certification requirement.

(a) *In general.* Tax is not imposed by section 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith and that is in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6) of this chapter, except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

(b) *References to § 145.4052-1(a)(2) of this chapter.* References to § 145.4052-1(a)(2) of this chapter appearing in § 145.4052-1 of this chapter apply also to paragraph (a) of this section.

(c) *Effective date.* This section is applicable after June 30, 1998. In addition, tax is not imposed on a sale occurring after December 31, 1997, and before July 1, 1998, if the conditions of paragraph (a) of this section are satisfied.

[T.D. 8879, 65 FR 17155, Mar. 31, 2000]

§ 48.4061(a) [Reserved]

§ 48.4061(a)-1 Imposition of tax; exclusion for light-duty trucks, etc.

(a) *Imposition of tax—(1) In general.* Section 4061(a)(1) imposes a tax on the sale by the manufacturer, producer, or importer of the following articles (including in each case parts and accessories therefor sold on or in connection therewith or with the sale thereof):

(i) Automobile truck and bus chassis and bodies;

(ii) Truck and bus trailer and semitrailer chassis and bodies; and